STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Brenda Carter,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CB-13-005
	)	
American Federation of State, County and Municipal Employees, Council 31,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD LOCAL PANEL

On December 21, 2012, the Illinois Labor Relations Board's Executive Director, Melissa Mlynski, dismissed the charge filed by Brenda Carter in the above-captioned case against the American Federation of State, County and Municipal Employees, Council 31 (AFSCME), alleging it had engaged in unfair labor practices in violation of Section 10(b)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b)(1) (2010). Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240, Carter filed a timely appeal of the dismissal. AFSCME filed a response. For the reasons articulated by the Executive Director, we affirm the dismissal of the charge.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

Robert M. Gierut
Chairman

Charles E. Anderson
Board Member

Richard Lewis
Board Member

Decision made at the Local Panel's public meeting in Chicago, Illinois on February 7, 2013; written decision issued in Chicago, Illinois on February 15, 2013.

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AFSCME Council 31,	)	
	)	
Respondent	)	

DISMISSAL

On July 26, 2012, Charging Party, Brenda Carter, filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board) in the above captioned case alleging that Respondent, the American Federation of State, County, and Municipal Employees, Council 31 (AFSCME or Union) violated Section 10(b)(1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), *as amended.* Following an investigation conducted pursuant to Section 11 of the Act, I determined that the charge fails to raise an issue of fact or law sufficient to warrant a hearing and hereby issue this Dismissal for the reasons set forth below.

I. INVESTIGATORY FACTS AND POSITION OF THE PARTIES

Respondent is a labor organization within the meaning of Section 3(i) of the Act, and the exclusive representative of a bargaining unit comprised of certain employees of the County of Cook, Health and Hospital Systems (Employer or County), including those employees in the job title or classification of Clerk V (Unit). The County is a public employer within the meaning of Section 3(o) of the Act. Charging Party is a public employee within the meaning of Section 3(n) of the Act, a member of the Unit, and, until the time of her termination, was employed by the

County as a Clerk V. The Union and Employer are parties to a collective bargaining agreement (CBA) which provides a grievance procedure culminating in arbitration.

On or about July 10, 2012, Carter became embroiled in a workplace dispute with supervisor Josie Ross concerning the timely registration and order in which patients are to be scheduled for medical treatment. Carter claims that Ross insisted that Carter stop what she was doing, and correct a charting error Carter had made earlier. Carter claims that the clinic was busy and that she was alone at the registration desk. Carter admits that she told Ross that once the rush of patients eased, Carter would correct her mistake.

A short time later, Ross called Carter to her office to offer Carter direction in the registration of patients. According to Carter, Ross was unreasonable and argumentative, and that Ross' tone of voice seemed so aggressive that she felt threatened. Carter departed Ross' office believing that Ross was trying to provoke a physical fight. Carter tried to contact the Union to complain about Ross' behavior. Before she could make contact, Ross ordered Carter to hang up the phone and leave the clinic. Carter attempted to contact the Union again, but again Ross demanded that Carter leave.

On or about July 11, 2012, upon arrival at the clinic, Ross told Carter that she was suspended and ordered security guard Angel Rodriguez to escort Carter from the clinic. Carter claims that Ross refused to explain the reason for the suspension.

On or about July 16, 2012, Carter received a letter in the mail from Denise Gilbert, RN, Director of Nursing (DON) of Respondent's West Cluster Clinics. AFSCME President Carmen Goodloe was copied (cc'd) on this correspondence. The letter asserted that Carter was accused of violating several rules of conduct, including insubordination and negligence in the performance of her duties. The letter also served as notification to Carter and the Union that a

hearing date of July 23, 2012 was scheduled. The July 23 meeting was postponed and rescheduled for August 6, 2012, after Carter arrived but was not represented by AFSCME Local 1111 personnel. Carter admits that she did not personally notify the Union, but relied on the Employer's letter to do so.

In attendance at the August 6 meeting representing the Employer were Ross, DON Gilbert, and hearing officer, Carolyn Ballard. Carter was represented by AFSCME Local 1111's Chief Steward Elissa Watson and Vice President Lisa Egan. At the meeting, the Employer detailed its reasons for terminating Carter's employment. The Union argued that Carter's suspension was inappropriate and suggested that Carter receive a verbal reprimand. On August 8, 2012, Watson filed a grievance on behalf of Carter challenging Carter's suspension and termination, and advanced the issues to arbitration. On September 4, 2012, Respondent notified Carter that her employment with the County was terminated. A grievance hearing concerning the suspension and the termination was convened during the week of December 1, 2012, the results of which are unknown.

Carter alleges that the County unlawfully suspended her on July 11, 2012, and eventually terminated her employment on September 4, 2012. Charging Party asserts that in June 2012 she supported the candidacy of Jewel Wallace for AFSCME Local 1111 president, and opposed the candidacy of Carmen Goodloe. Charging Party claims that because of that support for Wallace, the Union failed to support her during this disciplinary process. The Union denies that it violated the Act, and denies that it denied Carter its support.

II. DISCUSSION AND ANALYSIS

Section 10(b)(1) of the Act provides, it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce public employees in the exercise of the rights guaranteed in this Act, provided, ...(ii) that a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act.

In duty of fair representation cases, a two-part standard is used to determine whether a union has committed intentional misconduct within the meaning of Section 10(b)(1). Under that test, a charging party must establish that the union's conduct was intentional and directed at charging party, and secondly, that the union's intentional action occurred because of and in retaliation for charging party's past actions, or because of charging party's status (such as his or her race, gender, or national origin), or because of animosity between charging party and the union's representatives (such as that based on personal conflict or charging party's dissident union support). The Board's use of this standard, based on Hoffman v. Lonza, Inc., 658 F.2d 519 (7th Cir. 1981), was affirmed by the Illinois Appellate Court in Murry v. American Federation of State, County and Municipal Employees, Local 1111, 305 Ill. App. 3d 627, 712 N.E.2d 874, 15 PERI ¶4009 (1st Dist. 1999), aff'g American Federation of State, County and Municipal Employees, Local 1111 (Murry), 14 PERI ¶3009 (IL LLRB 1998). Charging Party has alleged that because of her support of a rival candidate for local union president, Local 1111 took no action on her behalf following her suspension and eventual termination. This is simply not accurate.

No one from the Union was present at the July 23, 2012 meeting. However, Charging Party admits that she made no effort to secure union representation prior to the date of the meeting. Furthermore, the Union represented Charging Party at the August 6, 2012 meeting and filed a grievance on behalf of Carter following the meeting. The Union has advanced the grievance, challenging both the suspension and termination, to an arbitration hearing, which was held the first week of December 2012. Simply stated, the Union has stood by its duty to represent Carter. Her claim that local president Goodloe and the officers of Local 1111 have retaliated against her because of her support for an opposition candidate lacks merit as there has been no substantive evidence to support that allegation.

Under Section 6(d) of the Act, the exclusive representative has a wide range of discretion in grievance handling, and as the Board has previously held, a union's failure to take all the steps it might have taken to achieve the results desired by a particular employee does not violate Section 10(b)(1), unless as noted above, the union's conduct appears to have been motivated by vindictiveness, discrimination, or enmity. Outerbridge and Chicago Fire Fighters Union, Local 2, 4 PERI ¶3024 (IL LLRB 1988); Parmer and Service Employees International Union, Local 1, 3 PERI ¶3008 (IL LLRB 1987). In the instant case, the Union provided representation at the August 6 meeting and recommended alternative discipline. Furthermore, the Union chose to pursue a grievance challenging Carter's suspension and termination all the way to arbitration. As there is no evidence indicating that the Union was improperly motivated in this case, Charging Party has failed to present grounds upon which to issue a complaint for hearing.

III. ORDER

Accordingly, the instant charge is hereby dismissed. Charging Party may appeal this dismissal to the Board at any time within 10 calendar days of service hereof. Any such appeal

must be in writing, contain the case caption and number, and be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Appeals will not be accepted in the Board's Springfield office. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeal is received within the time specified herein, this dismissal will become final.

Issued in Springfield, Illinois, this 21st day of December, 2012.

STATE OF ILLINOIS
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LOCAL PANEL

Melissa Mlynski, Executive Director